

**KENTUCKY PERSONNEL BOARD
MINUTES OF DECEMBER 13, 2013**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Doug Sapp on, December 13, 2013, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Board Personnel Present:

Wayne "Doug" Sapp, Chairman
Larry B. Gillis, Vice Chairman
David F. Hutcheson, Jr., Member
Tommy W. Chandler, Member
Ramona Herndon, Member
Mark A. Sipek, Executive Director and Secretary
Boyce A. Crocker, General Counsel
Linda R. Morris, Administrative Section Supervisor
Cynthia Perkins, Administrative Specialist

Board Personnel Absent:

David B. Stevens, Member
Donald W. "Don" Blevins, Member

2. **READING OF THE MINUTES OF REGULAR MEETING HELD NOVEMBER 8, 2013**

The minutes of the last Board meeting had been previously circulated among the members. Chairman Sapp asked for additions or corrections. Mr. Hutcheson moved to approve the minutes, as submitted. Ms. Herndon seconded and the motion carried 5-0. The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek advised that this meeting ends Judge Chandler's first term on the Board. Mr. Sipek thanked Judge Chandler for his dedication and hard work on the Board. He hopes Judge Chandler will continue with the Board in the future.

At the conclusion of Mr. Sipek's report, Chairman Sapp called for the Personnel Cabinet's report.

4. **PERSONNEL CABINET'S REPORT**

The Hon. Dinah Bevington and Commissioner Mary Elizabeth Harrod came forward to present the Personnel Cabinet's report.

Ms. Bevington reiterated the Personnel Cabinet's Request for Opinion on Detail to Special Duty is withdrawn, for reasons outlined in her memo.

The Cabinet received the agencies responses to any changes to initial probationary periods and the responses were to be discussed at this Board meeting. However, Ms. Bevington advised the requests will be presented at the January 2014 Board meeting to give the Cabinet time to clear up any questions they have for the agencies.

The audit of the 2012 performance evaluations is completed. Commissioner Mary Elizabeth Harrod stated significant changes were made to the auditing process. Employee evaluation training has been a success. They understand what is required of themselves and the managers. The evaluations have improved due to manager compliance and employees being more involved in the evaluation process. A few managers were non-compliant and evaluations were not completed in the timeframes, but were only one or two days over.

A technical audit of the evaluations includes checking for math errors in the scores, checking that signatures are in red ink, and making sure that they are timely. The largest Agency with the lowest errors is the Justice and Public Safety Cabinet. They created their own checklist, which is now on-line for all agencies to use. The Justice and Public Safety Cabinet also want to make sure managers are timely with their evaluations and they created a form for them to complete stating the reason they are late.

The quality of performance evaluations has improved due to being consistent with the employee's position description. If not, the descriptions are updated. Interim comments are not justifying the ratings, so managers may need to be more descriptive.

Chairman Sapp was interested in the number of evaluations in the "unacceptable" range. Ms. Harrod responded that there were thirteen evaluations in the "unacceptable" range. She pulled these evaluations for review and said that they ranged across the board. Some evaluations were for employees who had been rated "highly effective" and had fallen in their ratings and some evaluations were for employees who were rated in the "needs improvement" or "unacceptable" range. Ms. Harrod stated that of the evaluations she reviewed, she noted some supervisors put employee(s) rated in the low categories on a Performance Improvement Plan (PIP). Ms. Harrod stated that 133 employees had requested consideration of their evaluation, which was a decrease from 173 the year before. Ms. Harrod stated that managers who had not completed timely evaluations will be audited in 2014, in order to make sure they do not continue in that path.

At the conclusion of the Personnel Cabinet's report, Chairman Sapp called the parties forward for oral argument.

5. **ORAL ARGUMENTS**

A. Angela Stumbo Baldwin v. Cabinet for Health and Family Services
Moved from November

Present for oral arguments were the Appellant, Angela Stumbo Baldwin; counsel for the Appellant, Hon. Jerry Patton; and counsel for Appellee, the Hon. Jennifer Wolsing. After presenting oral arguments, the parties answered questions from the Board.

B. Debra Vahle v. Cabinet for Health and Family Services

Present for oral arguments were counsel for the Appellant, Hon. Paul Fauri, and counsel for Appellee, the Hon. Jennifer Wolsing. After presenting oral arguments, the parties answered questions from the Board.

[Break 10:35 – 10:40]

6. **Investigations**

A. Request for investigation by John Hughes against Finance and Administration
Cabinet, Dept. of Revenue

Ms. Honor Barker, Executive Director, and the Hon. Cary Bishop were present for the Agency. Chairman Sapp inquired why Mr. Hughes was not present today. Mr. Sipek stated that although the request for investigation was on the Board's agenda, neither the Agency nor Mr. Hughes were specifically invited to attend, and that may be why he is not present.

Mr. Sipek stated Mr. Hughes has also filed an appeal (2013-264) on the same issues that are before the Board today as a request for investigation. A pre-hearing on Mr. Hughes' appeal is scheduled in January 2014.

Mr. Hutcheson moved to table this matter and await the appeal process. Ms. Herndon seconded and the motion carried 5-0.

B. Request for investigation referred by Executive Branch Ethics Commission
against the Public Service Commission
--Response of Public Service Commission

Mr. John Steffen, Executive Director of the Executive Branch Ethics Commission, and Mr. Derouen, Executive Director for the Public Service Commission, were present.

Mr. Steffen referred a complaint to the Personnel Board for investigation. Mr. Derouen stated that there was no violation committed by the Public Service Commission and there is no relief the Personnel Board could grant the complainants. Therefore, there is no reason for the Personnel Board to investigate.

After some discussion, Mr. Hutcheson moved to investigate, with no second, the motion failed. Judge Chandler then moved to table this matter to next month. Mr. Gillis seconded and the motion carried 5-0.

7. CLOSED SESSION

Judge Chandler moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications. Ms. Herndon seconded. Chairman Sapp stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 5-0. (11:45 a.m.)

Mr. Hutcheson moved to return to open session. Mr. Gillis seconded and the motion carried 5-0. (12:20 p.m.)

8. CASES TO BE DECIDED

The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

- A. Angela Stumbo Baldwin v. Cabinet for Health and Family Services (2012-273)
Moved from November

Mr. Gillis moved to note Appellant's exceptions, Appellee's response, and oral arguments and to accept the recommended order dismissing the appeal. Judge Chandler seconded and the motion carried 5-0.

- B. Debra Vahle v. Cabinet for Health and Family Services (2012-148)

Mr. Gillis moved to note Appellant's exceptions, Appellee's response and oral arguments and to defer this matter to the next Board meeting. Mr. Hutcheson seconded and the motion carried 5-0.

C. Ricky Jacobs v. Department of Agriculture (2013-007)
Deferred from November meeting

Judge Chandler moved to note Appellee's exceptions, Appellant's response and oral arguments and to accept the Final Order Altering the recommended order and dismissing the appeal, as attached to the minutes. Mr. Gillis seconded and the motion carried 5-0.

D. Ashley Lewis v. Cabinet for Health and Family Services (2013-028)

Mr. Hutcheson moved to note Appellant's exceptions and Appellee's response and to defer this matter to the next Board meeting. Ms. Herndon seconded and the motion carried 5-0.

E. Melissa Jan Williamson v. Labor Cabinet and Mark Bizzell (2011-102)

Mr. Gillis moved to note Intervenor's exceptions and to accept the recommended order dismissing the appeal. Ms. Herndon seconded and the motion carried 5-0.

F. Wade Hester v. Cabinet for Health and Family Services (2012-271)

Ms. Herndon moved to defer this matter to the next Board meeting. Mr. Gillis seconded and the motion carried 5-0.

G. Kim Shoemaker v. Transportation Cabinet and Amber Hale (2012-044)

Mr. Hutcheson moved to accept the recommended order dismissing the appeal. Judge Chandler seconded and the motion carried 5-0.

Show Cause Orders - Appeals Dismissed – No Response Filed

The following cases had a show cause order entered by the hearing officer recommending that the appeals be dismissed for failure to timely prosecute unless a statement was filed by the Appellants stating sufficient cause to excuse their failure to appear at the scheduled hearing. There were no responses submitted by the Appellants to the show cause orders.

H. Anthony Guest v. Justice and Public Safety Cabinet (Juvenile Justice)

Ms. Herndon moved to find that the Appellant had not responded to the show cause order and that the recommended order be accepted, with clerical correction, dismissing the appeal for failure to timely prosecute the appeal. Mr. Hutcheson seconded and the motion carried 5-0.

- I. Debbie Hébert v. Cabinet for Health and Family Services
- J. Jeffrey Martin v. Justice and Public Safety Cabinet (Corrections)
- K. Mary Martins v. Public Protection Cabinet
- L. David Strickland v. Justice and Public Safety Cabinet (Corrections)

Judge Chandler moved to find that the Appellants had not responded to the show cause orders and that the recommended orders be accepted *en bloc* dismissing the appeals for failure to timely prosecute the appeals. Mr. Hutcheson seconded and the motion carried 5-0.

9. **WITHDRAWALS**

Judge Chandler moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Ms. Herndon seconded and the motion carried 5-0.

- A. Tami Adkins v. Justice and Public Safety Cabinet (Juvenile Justice)
- B. Ruby Butler v. Energy and Environment Cabinet
- C. Kalan Brown v. Justice and Public Safety Cabinet (Corrections)
- D. Pauline Duncan v. Justice and Public Safety Cabinet (Corrections)
- E. Daymon Duvall v. Justice and Public Safety Cabinet (Corrections) – 4 appeals
- F. Melissa Powell v. Cabinet for Health and Family Services – 3 appeals
- G. Marlene Sheets v. Justice and Public Safety Cabinet (Corrections)
- H. Julie Williams v. Personnel Cabinet
- I. Robert Williams v. Justice and Public Safety Cabinet (Corrections) (3 appeals)
- J. Jason Bailey v. Cabinet for Health and Family Services
- K. Mary Tomlinson v. Department of Agriculture
- L. Travis Wallace v. Education and Workforce Development Cabinet and Personnel Cabinet

10. **SETTLEMENTS**

Mr. Hutcheson moved to accept the settlements *en bloc* as submitted by the parties, and to sustain the appeals to the extent set forth in the settlements. Ms. Herndon seconded and the motion carried 5-0.

- A. Shannon Cassady v. Cabinet for Health and Family Services
- B. Rebecca Cornell v. Cabinet for Health and Family Services (mediated)
- C. Misty Mahon v. Cabinet for Health and Family Services
- D. Stephanie Smith v. Cabinet for Health and Family Services (mediated)
- E. Douglas Elam v. Justice and Public Safety Cabinet (Juvenile Justice)
- F. Janeen English v. Cabinet for Health and Family Services

11. **OTHER**

Judge Chandler said that, if he does not come back or is not reappointed, he wanted to say he enjoyed working with the Board. Chairman Sapp stated that Judge Chandler's contributions to the Board have been significant and helpful and he hopes for his return to the Board.

There being no further business, Mr. Gillis moved to adjourn. Ms. Herndon seconded and the motion carried 5-0. (12:25 p.m.)

Wayne D. Sapp, Chairman

Larry Gillis, Vice Chairman

David F. Hutcheson, Jr., Member

Tommy W. Chandler, Member

Ramona Herndon, Member